

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
February 2, 2011

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Chairman, Senate Judiciary Committee  
On Judicial Nominations  
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Today, the Judiciary Committee holds its first confirmation hearing of the 112th Congress, welcoming three nominees for lifetime appointments to the Federal bench and a nominee to be Chairman of the Foreign Claims Settlement Commission. All four of these superbly qualified nominees were first nominated by President Obama last year and have been re-nominated.

I thank Senator Coons for chairing this important confirmation hearing. I also thank the Committee's new Ranking Member, Senator Grassley, for working with me to schedule this hearing. At a time of skyrocketing judicial vacancies, it is important the Committee begin its consideration of pending nominations.

Yesterday in a speech at the National Press Club, White House Counsel Bob Bauer highlighted the pressing need for Senate consideration and confirmation of judicial nominations. He is right. Judicial vacancies total more than 100, nearly half of which are judicial emergencies, and the ability of all Americans to have equal access to a fair hearing in court is at risk.

The judiciary itself has weighed in regarding this crisis. In his "Year-End Report on the Federal Judiciary," Chief Justice Roberts called attention to the problem facing many overburdened district and circuit courts across the country. The Committee has received letters from the Chief Judges of the Ninth Circuit Court of Appeals and United States District Courts in California, Colorado, Illinois and the District of Columbia, all pleading with the Senate to end the blockade of nominations and confirm judges to fill vacancies in their courts. The Senate must move beyond the partisanship that has resulted in this vacancies crisis.

At a time when nearly one out of every eight Federal judgeships was vacant, the Senate last year adjourned without voting on 19 judicial nominations favorably reported by the Judiciary Committee. Attorney General Holder had warned that, "The federal judicial system that has been a rightful source of pride for the United States -- the system on which we all depend for a prompt and fair hearing of our cases when we need to call on the law -- is stressed to the breaking point." The National Association of Assistant United States Attorneys, a group of career Federal prosecutors, wrote to Senate leaders saying that, "Our federal courts cannot function effectively when judicial vacancies restrain the ability to render swift and sure justice." The Senate failed to heed these warnings.

We must do better. We can consider and confirm the President's nominations to the Federal bench in a timely manner. At the end of the 111th Congress, there were 19 judicial nominations left on the Senate's Executive Calendar awaiting a vote. These were superbly qualified nominees with a strong commitment to the rule of law and a demonstrated faithfulness to the Constitution. Fifteen of these nominees were reported with strong bipartisan support; 13 of them were reported unanimously by the Judiciary Committee. They could and should have been considered and confirmed before Congress adjourned.

The real costs of these unnecessary delays fall on Americans who depend on the courts. Last September, in a letter to Senate leaders, President Obama wrote that these delays are "undermining the ability of our courts to deliver justice to those in need . . . from working mothers seeking timely compensation for their employment discrimination claims to communities hoping for swift punishment for perpetrators of crimes to small business owners seeking protection from unfair and anticompetitive practices." The President is right.

Having enough Federal judges to fulfill the responsibilities of the Federal judiciary is not a partisan issue. The Senate should ensure that the Federal judiciary has the judges and resources it needs to provide justice to Americans in courts throughout the country. When I was Chairman of the Judiciary Committee during 17 months of President Bush's first two years in office with a Democratic majority, we favorably reported 100 of his Federal circuit and district court nominees. All 100 were confirmed. I continued to work hard to make progress considering President Bush's circuit and district court nominations as Ranking Member during the President Bush's third and fourth years in office when Senator Hatch was the Committee chairman, and the Senate confirmed another 105.

Overall, judicial vacancies were reduced during the Bush administration from more than 10 percent to less than four percent. During the Bush administration, the Federal court vacancies were reduced from 110 to 34 and Federal circuit court vacancies were reduced from a high of 32 down to single digits. Regrettably, this progress has not continued with a Democratic President in office. Instead, the minority has allowed votes on only 60 of the 80 of President Obama's Federal circuit and district court nominees favorably reported by the Judiciary Committee and vacancies have again skyrocketed to over 100 and remain over 10 percent.

One of the nominees before us today, Caitlin Halligan, has been nominated to fill the 10th seat on the D.C. Circuit, a very important court often called the second highest court in the Nation due to its unique jurisdiction. She is a highly respected appellate litigator who has excelled in private practice and public service, including six years as Solicitor General of the State of New York. I hope we will be able to consider her nomination fairly and in a timely manner as a sign of new cooperation in filling vacancies. Senate Democrats tried to turn the page on fights over judges when we confirmed President Bush's nomination of John Roberts to the D.C. Circuit in 2003, after two of President Clinton's highly qualified nominees, including now-Justice Elena Kagan--were stalled during the last two years of his administration. We cooperated in confirming three more of President Bush's D.C. Circuit nominees, filling the 10th and 11th seats on the D.C. Circuit. I hope we can cooperate now to fill the vacant 10th seat.

Judicial vacancies on courts throughout the country hinder the Federal judiciary's ability to fulfill its constitutional role. They create a backlog of cases that prevents people from having their day

in court. This is unacceptable. In order for the Senate to ensure that the courts are functioning at full capacity, we must restore regular order. A return to regular order would mean that nominations sent by the Judiciary Committee to the Senate should be considered expeditiously not stalled interminably. Noncontroversial nominations should be taken up and approved on a regular basis. They should not be stalled for weeks and months for no good reason. We must return to the Senate's long-standing practice of quickly considering well-qualified consensus judicial nominations reported by the Judiciary Committee. Senators should not be stalling noncontroversial nominees. We should not have months and months of damaging delays for no good reason on virtually every judicial nomination.

If Senators want to have a debate on a nomination, we should have one. But then we should vote. Nominations that do have opposition should be taken up on a regular basis for debate, with cloture votes if necessary, so that all nominations can be acted upon in a reasonable amount of time.

I welcomed Senator Grassley's remarks last week on the qualities he looks for in judicial nominees and I agree with him. I also agreed with Senator Hatch, a former chairman of this Committee, who said we need to do a better job of moving the vast majority of noncontroversial nominations quickly. I have often said that the 100 of us in the Senate stand in the shoes of over 300 million Americans. We owe it to them to do our constitutional duty of voting on the President's nominations to be Federal judges. We owe it to them to make sure that hard-working Americans are able to have their cases heard in our Federal courts.

All three branches of the Federal Government come together when the Senate considers a President's nomination to a lifetime appointment on the Federal bench. The Senate's has a constitutional duty to act responsibly to consider the President's nominees and to confirm members of the Judiciary. Most importantly, the Senate has a responsibility to the American people to help ensure that Federal judges are there to protect their rights and administer justice.

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